

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

T.C.B. CONSTRUCTION CO., INC.	§	PLAINTIFF
	§	
v.	§	CAUSE NO. 1:06CV965
	§	
FIDELITY & DEPOSIT CO. OF MD	§	DEFENDANT

**ORDER GRANTING DEFENDANT'S MOTION
FOR RELIEF UNDER FED. R. CIV. P. 56(f)**

BEFORE THE COURT is Defendant's Motion for Relief Under Fed. R. Civ. P. 56(f) [11]. The Plaintiff has responded in opposition. Having considered the pleadings on file and the relevant legal authority, it is the opinion of the Court that Plaintiff's Motion is well taken and should be granted.

DISCUSSION

Rule 56(f) motions are generally favored and should be liberally granted. *Stearns Airport Equipment Co. v. FMC Corp.*, 170 F.3d 518, 535 (5th Cir. 1999). However, a plaintiff may not simply rely on vague assertions that additional discovery will produce needed, but unspecified facts. *Krim v. BancTexas Group, Inc.* 989 F.2d 1435, 1442 (5th Cir. 1993). In order to prevail, a plaintiff must demonstrate a particular need for additional discovery and that the discovery will create a genuine issue of material fact. *Beattie v. Madison County School District*, 254 F.3d 595, 606 (5th Cir. 2001). Additionally, a plaintiff must show that it has been diligent in pursuing needed discovery. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 28 F.2d 1388, 1397 (5th Cir. 1994).

Plaintiff's dispositive motion requests judgment pursuant to Fed.R.Civ.P. 56 and was filed one month after the Complaint. Defendant's affidavit in support of its Motion states that it

was stymied in its efforts to investigate Plaintiff's claim once litigation was initiated, and now must conduct formal discovery in order to interview the Plaintiff. The Defendant is therefore hampered in its ability to properly respond to Plaintiff's motion because a case management conference has yet to be conducted and the initiation of formal discovery has not been permitted pursuant to Rule 26.1(A)(4) of the UNIFORM LOCAL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN DISTRICT OF MISSISSIPPI AND THE SOUTHERN DISTRICT OF MISSISSIPPI. Defendant did file a response to the Plaintiff's motion for summary judgment. However, under the circumstances of this case, it is the opinion of the Court that Defendant should be allowed to conduct discovery and file a supplemental response to Plaintiff's motion.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant's Motion for Relief Under Fed. R. Civ. P. 56(f) [11] is **GRANTED**.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff shall file its supplemental response to the pending motion for summary judgment no later than 30 days past the discovery deadline scheduled by Chief Magistrate Judge John M. Roper in a to-be-conducted case management conference.

SO ORDERED AND ADJUDGED this the 4th day of January 2007.

s/ *Louis Guirola, Jr.*

Louis Guirola, Jr.
United States District Judge